

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 21, 2002

To: The Commission
(Meeting of June 27, 2002)

From: Bill Julian
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 1519 (Bowen)** – Department of Water Resources: power.

As Amended June 20, 2002

Recommendation: Support

Summary: This bill:

- Directs the Commission to establish “a mechanism to allow electrical corporation retail end-use customers, upon their election to purchase renewable power,...” including a directive to utilities to offer their customers renewable power.
- Provides for a partial reinstatement of direct access, for purchases by direct access customers of renewable power from alternate providers.
- Provides for registration of all electric service providers serving direct access customers.
- Directs the California Public Utilities Commission (Commission) to provide for recovery from all direct access customers of certain costs related to Department of Water Resources (DWR) energy purchases on behalf of direct access customers and of utility costs for energy supply to or on behalf of those customers.

Analysis: This bill is a complement to the renewable portfolio standard legislation supported by the Governor and the Commission. It directs the Commission to provide end-use customers with renewable energy options including utility bundled service and a limited form of direct access.

- Bundled utility service

Proposed Section 366.5 (c) requires that the Commission direct utilities to offer a renewable bundled service option. The bill requires that the Commission price bundled renewable service in a manner that avoids shifting costs onto customers taking service under the standard tariffs of the electrical corporation.

- Direct Access for purchases of renewable energy
 - The suspension of direct access contained in ABX1 1 is ended for purchases of renewable energy.
 - The requirement that energy service providers (ESPs) register with the CPUC and make certain disclosures is extended to all ESPs, not just those who serve residential and small commercial customers as required by existing law. PU Code section 394(a) as proposed to be amended, SB 1519 page 6, lines 37-39.
 - Direct access customers are required to pay charges to permit recovery of costs by DWR and utilities.
- Cost Recovery Provisions

Proposed Sections 365.2 (e), (f) & (g) prescribe costs that must be paid by a direct access customer:

- A charge equivalent to the charge that the customer would pay to recover “bond related costs” of the DWR.
- A proportional share of the estimate net unavoidable power purchase contract costs attributable to the customer for the period between the commencement of direct access and the termination of DWR’s long-term contracts.
- A proportional share of the electric corporation’s “unrecovered past undercollections...attributable to the customer.”
- A proportional share of the electric corporation’s “estimated net unavoidable power purchase contract costs attributable to the customer,...

Each of these items are to be reflected in charges as determined by the Commission. The DWR charges are the property of DWR. The utilities charges are the property of the utilities.

Proposed Section 365.2(h) provides for a re-entry charge to be paid by direct access customer that “thereafter purchase electricity from an electrical corporation...” If the Commission determines that the charge would be necessary “...to avoid imposing costs on other customers of the electrical corporations or on the state.” (Page 6, lines 19-21 of the bill) These provisions provide for a comprehensive nondiscriminatory approach to cost recovery from direct access customers that is consistent with the approach provided for in community aggregation bill AB 117 (Migden) and does not prejudice issues before the Commission in the Old Direct Access proceeding. Categories of costs to be shared among direct access and bundled service customers, it conforms to the conceptual framework articulated by the Governor in his veto message for ABX2 9 (Migden).

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BJ:mpg
Attachment

BILL LANGUAGE:

BILL NUMBER: SB 1519 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JUNE 20, 2002
AMENDED IN ASSEMBLY JUNE 13, 2002
AMENDED IN SENATE APRIL 18, 2002

INTRODUCED BY Senator Bowen

FEBRUARY 20, 2002

An act to amend Section 394 of, and to add Section 365.2 to, the Public Utilities Code, relating to electric power.

LEGISLATIVE COUNSEL'S DIGEST

SB 1519, as amended, Bowen. Department of Water Resources: power.

(1) Existing law authorizes the Department of Water Resources to enter into contracts for the purchase of electric power, to sell power to retail end use customers and, with certain exceptions, to local publicly owned electric utilities at not more than the department's acquisition costs. Existing law provides that the department retains title to all power sold by it to the retail end use customers. Existing law directs the Public Utilities Commission to suspend direct transactions between electricity suppliers and end use customers of certain privately owned electrical corporations, until the department no longer supplies electrical power.

This bill would require the Public Utilities Commission, if it determines there is a shifting of recoverable costs, as specified, from customers who take service from an alternate provider to the customers of an electrical corporation, to recover those costs from each customer class in proportion to the load of each class that is served by alternate providers. The bill would declare this requirement to be consistent with the requirements of specified provisions of existing law, and therefore, declaratory of existing law.

This bill would require the commission to establish a mechanism to allow customers of an electrical corporation for whom direct transactions have been suspended, to elect to purchase renewable

power, as defined, from an alternate provider, as defined. The bill would prohibit implementation of the election to purchase renewable power until the commission develops a cost-recovery mechanism, as specified, that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and the effective date of this act. The bill would authorize the commission to require an electrical corporation to offer renewable power service to its customers. The bill would require a customer that elects to purchase renewable power from an alternate provider to reimburse the department *and the electrical corporation that previously served the customer* for specified costs *and charges* . ~~The bill would require a customer that purchases power from a community choice aggregator to reimburse the electrical corporation that previously served the customer for specified costs.~~ The bill would authorize ~~the department and~~ the commission to impose a charge, in certain circumstances, upon a customer if the customer returns to receiving electricity from the department or the electrical corporation. This charge would be the obligation of the alternate provider where customers are involuntarily returned to receiving electricity from the department or the electrical corporation. The bill would require each provider, as a condition of registration with the commission as an electric service provider, to post a bond or demonstrate insurance sufficient to cover the charge. The bill would require the commission to require each customer of an electrical corporation to be notified of the conditions for purchasing power from an alternate provider within 90 days of the effective date of these provisions. Because a violation of an order of the commission is a crime under existing provisions of law, the bill would impose a state-mandated local program by expanding the definition of a crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature, in enacting the

act adding this section, to establish a policy to govern the circumstances under which retail end use customers may choose to acquire service from energy providers other than the Department of Water Resources. The goal of that policy is to provide retail end use customers the greatest possible flexibility in procuring power while preventing any negative consequences for those customers who continue to be served by the Department of Water Resources. It is further the intent of the Legislature to recognize the genuine contributions of new and renewable sources of electrical generation to affordable, clean, reliable, and sustainable electricity service for all California residents.

SEC. 2. Section 365.2 is added to the Public Utilities Code, to read:

365.2. (a) As used in this section, the following terms have the following meanings:

(1) "Alternate provider" means an entity, other than an electrical corporation, supplying electricity to a retail end use customer within the service territory of an electrical corporation as the territory existed on February 1, 2001.

(2) "Department" means the Department of Water Resources.

(3) "Electrical corporation" means an electrical corporation, as defined in Section 218, serving the retail end use customers for which the department is procuring power pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(4) "Renewable power" means electricity produced from geothermal, wind, solar, biomass, or landfill gas sources.

(b) (1) It is the intent of the Legislature, that each retail end use customer that has purchased power from an electrical corporation on or after February 1, 2001, regardless of whether the customer thereafter takes service from an alternate provider, bear a pro rata share of the department's power purchase costs, as well as power purchase contract obligations incurred as of the effective date of this act, that are attributable to the customer and ~~area~~

are recoverable from electrical corporation customers in commission-approved rates. It is the further intent of the Legislature to prevent any shifting of recoverable costs from customers who take service from an alternate provider to electrical corporation customers.

(2) To the extent that any shifting of recoverable costs would occur, in the determination of the commission, those costs shall be recovered from each customer class in proportion to the load of each class that is served by alternate providers.

(3) The Legislature finds that this subdivision is consistent with the requirements of Chapter 4 of the Statutes of 2001, First Extraordinary Session, and is therefore declaratory of existing law.

(c) The commission shall establish a mechanism to allow electrical corporation retail end use customers, upon their election, to purchase renewable power. To accomplish this, the commission may require an electrical corporation to offer renewable power to its retail end use customers. Renewable power service may not be priced in a manner that results in shifting costs onto customers taking service under the standard tariffs of the electrical corporation.

(d) (1) Notwithstanding Section 80110 of the Water Code, a retail end use customer purchasing power from an electrical corporation, may elect to purchase renewable power from an alternate provider, upon payment of the costs described in ~~subdivision (e)~~ *subdivisions (e) and (f)*, and pursuant to the terms and conditions as may necessarily be imposed by the commission, consistent with this section.

(2) This subdivision shall not become operative until the commission develops a cost-recovery mechanism, consistent with subdivision (b), that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and the effective date of this act adding this section.

(3) Ninety days prior to implementing this subdivision, the commission shall submit a report certifying its satisfaction of paragraph (2) to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.

(e) A retail end use customer that elects to purchase electricity from an alternate provider ~~shall reimburse the department for~~ *pursuant to this section shall pay* all of the following:

~~—(1) The department's unrecovered actual cost of power procurement, including any financing and administrative costs, attributable to that customer, as determined by the commission. The department's actual cost shall be calculated as the difference, if any, between the department's total actual procurement costs attributable to a customer and the revenues collected by the department from the customer during the customer's term of service with the department. The commission shall publish, and update as necessary, a formula for calculation of unrecovered costs that are due pursuant to this subdivision.~~

(1) A charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond related costs pursuant to any agreement between the commission and the department pursuant to Section 80110 of the Water Code. The charge shall be payable until all obligations of the department pursuant to Division 27 (commencing with Section 80000) of the Water Code are

fully paid or otherwise discharged. The revenue from the charge are the property of the department.

(2) Any additional costs of the department, equal to the share of the department's estimated net unavoidable power purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from an alternate provider, through the expiration of all then existing power purchase contracts entered into by the department.

(f) A retail end use customer ~~purchasing power from a community choice aggregator~~ *that elects to purchase electricity from an alternate provider* pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:

(1) The electrical corporation's unrecovered past undercollections, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.

(2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable power purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing power purchase contracts entered into by the electrical corporation.

(g) *The revenue from any charge or cost imposed pursuant to subdivision (e) is the property of the department. The revenues from any charge or cost imposed pursuant to subdivision (f) is the property of the electrical corporation, as applicable and as determined by the commission. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations, necessary to ensure that costs recovered pursuant to this section shall be promptly remitted to the party entitled to the payment.*

(2) *A charge or cost imposed pursuant to this section shall be nonbypassable.*

(h) If a nonresidential retail end use customer previously served by an alternate provider thereafter purchases electricity from an electrical corporation, the ~~department and the~~ commission may impose a charge equivalent to any unavoidable costs imposed on the electricity portfolio of the department or an electrical corporation, attributable to the load of that customer, if the charge is necessary to avoid imposing costs on other customers of the electrical corporation, or on the state. If a customer is

involuntarily returned to electricity service from an electrical corporation by an alternate provider, any such charge shall be the obligation of the alternate provider except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration pursuant to Section 394 of the Public Utilities Code, an alternate provider shall post a bond or demonstrate insurance sufficient to cover such a charge.

~~—(h)—~~

(i) Within 90 days of the effective date of the act adding this section, the commission shall require each electrical corporation retail end use customer to be notified of conditions for purchasing power from an alternate provider pursuant to this section.

SEC. 3. Section 394 of the Public Utilities Code is amended to read:

394. (a) As used in this section, "electric service provider" means an entity that offers electrical service to customers within the service territory of an electrical corporation, but does not include an electrical corporation, as defined in Section 218, or a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. "Electric service provider" includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218.

(b) Each electric service provider shall register with the commission. As a precondition to registration, the electric service provider shall provide, under oath, declaration, or affidavit, all of the following information to the commission:

- (1) Legal name and any other names under which the electric service provider is doing business in California.
- (2) Current telephone number.
- (3) Current address.
- (4) Agent for service of process.
- (5) State and date of incorporation, if any.
- (6) Number for a customer contact representative, or other personnel for receiving customer inquiries.
- (7) Brief description of the nature of the service being provided.

(8) Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed within the 10 years immediately prior to registration, against the company or any owner, partner, officer, or director of the company pursuant to any state or federal consumer protection law or regulation, and of any felony convictions of any

kind against the company or any owner, partner, officer, or director of the company. In addition, each electric service provider shall furnish the commission with fingerprints for those owners, partners, officers, and managers of the electric service provider specified by any commission decision applicable to all electric service providers.

The commission shall submit completed fingerprint cards to the Department of Justice. Those fingerprints shall be available for use by the Department of Justice and the Department of Justice may transmit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The commission may use information obtained from a national criminal history record check conducted pursuant to this section to determine an electric service provider's eligibility for registration.

(9) Proof of financial viability. The commission shall develop uniform standards for determining financial viability and shall publish those standards for public comment no later than March 31, 1998. In determining the financial viability of the electric service provider, the commission shall take into account the number of customers the potential registrant expects to serve, the number of kilowatthours of electricity it expects to provide, and any other appropriate criteria to ensure that customers have adequate recourse in the event of fraud or nonperformance.

(10) Proof of technical and operational ability. The commission shall develop uniform standards for determining technical and operational capacity and shall publish those standards for public comment no later than March 31, 1998.

(c) Any registration filing approved by the commission prior to the effective date of this section which does not comply in all respects with the requirements of subdivision (a) of Section 394 shall nevertheless continue in force and effect so long as within 90 days of the effective date of this section the electric service provider undertakes to supplement its registration filing to the satisfaction of the commission. Any registration that is not supplemented by the required information within the time set forth in this subdivision shall be suspended by the commission and shall not be reinstated until the commission has found the registration to be in full compliance with subdivision (a) of Section 394.

(d) Any public agency offering aggregation services as provided for in Section 366 solely to retail electric customers within its jurisdiction that has registered with the commission prior to the enactment of this section may voluntarily withdraw its registration to the extent that it is exempted from registration under this chapter.

(e) Before reentering the market, electric service providers whose registration has been revoked shall file a formal application with

the commission that satisfies the requirements set forth in Section 394.1 and demonstrates the fitness and ability of the electric service provider to comply with all applicable rules of the commission.

(f) Registration with the commission is an exercise of the licensing function of the commission, and does not constitute regulation of the rates or terms and conditions of service offered by electric service providers. Nothing in this part authorizes the commission to regulate the rates or terms and conditions of service offered by electric service providers.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.